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DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: Adverse Effect Wage Rate for Range Occupations in 2017

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) is issuing this notice to announce the 2017 Adverse Effect Wage Rate (AEWR) for the employment of temporary or seasonal nonimmigrant foreign workers (H-2A workers) to perform herding or production of livestock on the range.

AEWRs are the minimum wage rates the Department has determined must be offered and paid by employers to H-2A workers and workers in corresponding employment so that the wages of similarly employed U.S. workers will not be adversely affected. In this notice, the Department announces the annual update of the AEWR for workers engaged in the herding or production of livestock on the range, as required by the methodology established in the Temporary Agricultural Employment of H-2A Foreign Workers in the Herding or Production of Livestock on the Range in the United States, 80 FR 62958, 63067-63068 (Oct. 16, 2015); 20 CFR 655.211.

EFFECTIVE DATE: This notice is effective January 1, 2017.

FOR FURTHER INFORMATION CONTACT: William W. Thompson, II, Acting Administrator, Office of Foreign Labor Certification, U.S. Department of Labor, 200 Constitution Avenue, NW., Room PPII-12-200, Washington, DC 20210. Telephone:

202-693-3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

The U.S. Citizenship and Immigration Services of the Department of Homeland Security will not approve an employer's petition for the admission of H-2A nonimmigrant temporary agricultural workers in the U.S. unless the petitioner has received from the Department an H-2A labor certification. The labor certification provides that: (1) there are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5); 20 CFR 655.100.

Adverse Effect Wage Rate for 2017

The Department's H-2A regulations covering the herding or production of livestock on the range (H-2A Herder Rule) at 20 CFR 655.210(g) and 655.211(a)(1) provide that employers must offer, advertise in recruitment and pay each worker employed under 20 CFR 655.200-655.235 a wage that is at least the highest of: (i) the monthly AEWR, (ii) the agreed-upon collective bargaining wage, or (iii) the applicable minimum wage imposed by Federal or State law or judicial action. Further, when the monthly AEWR is adjusted during a work contract, and is higher than both the agreed-upon collective bargaining wage and the applicable minimum wage imposed by Federal or State law or

judicial action in effect at the time the work is performed, the employer must pay that adjusted monthly AEWR upon publication by the Department in the Federal Register. 20 CFR 655.211(a)(2).

As provided in 20 CFR 655.211(c) of the H-2A Herder Rule, the methodology for establishing the monthly AEWR for range occupations in all states is based on the rate of \$7.25/hour multiplied by 48 hours per week, and then multiplied by 4.333 weeks per month. Beginning for calendar year 2017, the monthly AEWR shall be adjusted annually based on the Employment Cost Index (ECI) for wages and salaries published by the Bureau of Labor Statistics for the preceding annual period. The 12-month change in the ECI for wages and salaries between September 2015 and September 2016 was 2.4 percent. ETA used that percentage to adjust the monthly AEWR.¹

The H-2A Herder Rule applies a two-year transition to the full monthly AEWR. In applying the transition wage rate methodology set forth under 20 CFR 655.211(d)(2) for calendar year 2017, the Department is setting the national monthly AEWR at 90 percent of the full wage calculated using the H-2A Herder Rule methodology. Thus, the national monthly AEWR rate for all range occupations in the H-2A program is calculated at $(\$7.25 \times 48 \times 4.333 \times 1.024 \times .90 = 1,389.67)$ or \$1,389.67.

Accordingly, any employer certified or seeking certification for range workers must pay each worker a wage that is at least the highest of the monthly AEWR of \$1,389.67, the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by

¹ The regulation at 20 CFR 655.211(c)(2) states that the monthly AEWR is calculated based on the Employment Cost Index for wages and salaries for the preceding October – October period. This was intended to refer the October publication of data by BLS of wages and salaries for the September – September period. Accordingly, the most recent 12-month change in the Employment Cost Index published on October 28, 2016 by the Bureau of Labor Statistics was used for establishing the monthly AEWR for the second transition year under the regulations. See <http://www.bls.gov/news.release/eci.nr0.htm>.

Federal or State legislation or judicial action, at the time work is performed on or after the effective date of this notice.

Signed in Washington, D.C.

Portia Wu,
Assistant Secretary,
Employment and Training Administration.

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